

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

GINA R. LIPARI-WILLIAMS, et al.,)	
)	
Plaintiffs,)	
v.)	Case No.: 5:20-cv-06067-SRB
)	
THE MISSOURI GAMING COMPANY, LLC,)	
d/b/a ARGOSY RIVERSIDE CASINO, et al.,)	
)	
Defendants.)	

**DEFENDANT PENN NATIONAL GAMING, INC.’S MOTION TO DISMISS
COUNT VII OF PLAINTIFFS’ SECOND AMENDED COMPLAINT**

Pursuant to Federal Rules of Civil Procedures 12(b)(1) and 12(b)(6), Defendant Penn National Gaming, Inc. (“PNG”) moves to dismiss Count VII of Plaintiffs’ Second Amended Complaint.

As demonstrated in Defendant’s Suggestions in Support of Defendants’ Motion to Dismiss Count VII of Plaintiffs’ Second Amended Complaint, filed contemporaneously herewith and in support of this Motion, Plaintiff Marissa Hammond (“Hammond”) does not have constitutional standing because she was not injured by any allegedly unlawful conduct on the part of PNG with respect to the group health plan sponsored by PNG (the “Plan”). Accordingly, Count VII presents no case or controversy as required by Article III of the Constitution. In addition, Hammond also does not have statutory standing to bring an ERISA claim because she is not a current participant of the Plan, or a member of any other class of persons for whom ERISA permits a cause of action.

Further, Plaintiffs’ Second Amended Complaint fails to state a claim on which relief may be granted under Section 502(a)(1) of ERISA, 29 U.S.C. § 1132(a)(1), because it does not seek to recover Plan benefits or enforce the terms of the Plan. Likewise, the Second Amended Complaint

also fails to state a claim under Section 502(a)(2) of ERISA, 29 U.S.C. § 1132(a)(2), because Hammond does not allege any injury to the Plan or seek relief on behalf of the Plan.

PNG incorporates its Suggestions in Support of this Motion as though fully set forth herein.

WHEREFORE, PNG respectfully requests that the Court dismiss Count VII of the Second Amended Complaint with prejudice, and grant such further relief as the Court may deem appropriate.

Respectfully submitted,

POLSINELLI PC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of December 2020, a true and correct copy of the above and foregoing was electronically filed with the Clerk of the Court by using the Court's eFiling System, which sends a notice of electronic filing constituting service to the following:

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